

REMARKS

The Examiner states that restriction of the pending claims into fifteen groups is required under 35 U.S.C. § 121. Applicants elect the claims of Group I (claims 1, 10-16, 22 and 23) without traverse. Applicants make this election without waiver of their right to continue to prosecute and to obtain claims to the non-elected subject matter either in this application or by filing divisional or continuing applications claiming priority and benefit from this application.

The Examiner states that if applicants elect the claims of Group I, that they must elect one hybridoma cell line from claim 15 or claim 22. The Examiner also states that the election of a cell line is not an election of species but to patentably distinct products. See Restriction Requirement at page 6. Applicants traverse.

Both claim 15 and claim 22 are directed to specific antibodies or antigen-binding portion thereof that are species of the genus of antibodies or antigen-binding portion thereof encompassed by claim 1. Both claims 15 and 22 include all of the limitations in claim 1. Thus, claim 1 is a generic claim that includes all of the species claimed in claims 15 and 22.

According to 37 C.F.R. §1.141(a), "[t]wo or more independent and distinct inventions may not be claimed in one national application, except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim

Application No.: 10/628,004
Response dated September 25, 2006
In Response to June 29, 2006 Restriction Requirement

generic to all the claimed species and all the claims to species in excess of one are written in dependent form or otherwise include all the limitations of the generic claim." MPEP 806.04 states that this practice is set forth in 37 C.F.R. §1.146. 37 C.F.R. §1.146 sets forth the election of species practice and states that "an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant . . . to elect a species of his or her invention to which his or her invention will be restricted if no claim to the genus is found to be allowable."

Accordingly, applicants respectfully submit that the election of a single hybridoma cell line should be a species election because elected claim 1 is generic to claims 15 and 22, the number of species recited in claims 15 and 22 is reasonable, and both claims depend from generic claim 1. If the Examiner agrees, applicants elect the hybridoma cell line designated ATCC PTA-3002 as the species. If the Examiner does not agree with this proposal, pursuant to 37 C.F.R. § 1.143, applicants provisionally elect with traverse the hybridoma cell line designated ATCC PTA-3002 for initial substantive examination.



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The Examiner is invited to telephone the undersigned to discuss any issue pertaining to this response. Applicants request favorable consideration of the application and early allowance of the pending claims.

Respectfully submitted,

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